

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1140 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DHIRAJLAL POPATLAL

Appearance:

1. Criminal Appeal No. 1140 of 1991
Mr.A.M.Bukhari, A.P.P for Petitioner No. 1
DELETED for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 2-4
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/07/2001

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal

against the judgment and order passed by Chief judicial Magistrate, Junagadh in Criminal Case No.1803/89 on September 9, 1991. By virtue of that order present respondents came to be acquitted of the charges under Sections 7 and 16 of the Prevention of Food Adulteration Act, levelled against them.

2. The facts of the case can be stated in brief as under :-

2.1 Shri Raphuel P.Christian, serving as Food Inspector at Junagadh, went on October 18, 1988, at about 12:30 p.m. to hotel Annapurna situated at Jaishree Road, Junagadh. He was accompanied by his helper. He summoned one Mr.Janakbhai Sindhi as a panch witness and went to the counter. He introduced himself as a Food Inspector and disclosed the purpose of his visit namely inspection. The man sitting on the counter introduced himself as Dhirajlal Popatlal Vadi. He also informed the Food Inspector that he was sitting on the counter only to help the owner. He said that he is on the payroll of the hotel.

2.2 The Sub-Inspector went to the kitchen of the hotel alongwith panch and the said Dhiraj Kumar. He found about 2-3 Kilo of curd in a stainless steel Vessel, which was meant for being served to the customers as disclosed by Dhirajkumar. The Food Inspector therefore, purchased 600 gms of curd in a clean stainless steel vessel for samples and thereafter gave a notice under Rule 12 of the Food Adulteration Rules. Before taking the sample he had churned the milk properly with the help of a wooden churner. The said sample of curd was divided into three parts and was placed in three clean bottles and 40% formalin was mixed with the said samples (which is produced in each of the bottles). Thereafter the bottles were properly corked and properly sealed. Panchnama in this regard was also prepared. One of the samples was sent in parcel through State Transport Corporation Parcel Service to the public analyst alongwith memorandum. The remaining two samples were entrusted to the local health authority, Junagadh. The public analyst analysed the sample and opined that they did not conform to the prescribed standards. On receipt of the public analyst's report, sanction for prosecution was obtained and complaint was lodged by the Food Inspector in the Court of Chief Judicial Magistrate, Junagadh which was registered as Criminal Case No.1803/89.

2.3 The complaint was filed against the four

respondents, present respondent and former respondent No.1 Dhirajlal Popatlal - accused (now has been deleted). The trial proceeded against them and considering the evidence on record, the learned Chief Judicial Magistrate came to the conclusion that the prosecution had failed to prove charges against the accused persons and therefore, the respondents alongwith deleted respondent Dhirajlal came to be acquitted by the learned Chief Judicial Magistrate by judgment and order impugned herein.

3. The learned Additional Public Prosecutor Mr.Bukhari contended that the sample is found to be not conforming to the prescribed standards. The respondents are therefore responsible for the adulteration as they are partners of the firm and therefore, they ought to have been convicted. Mr.Bukhari has submitted that the deleted respondent Dhirajlal was an employee of the firm and was managing the firm and therefore, he also ought to have been convicted. The learned Chief Judicial Magistrate has proceeded on the premise that the sample was taken and examined of curd meant for direct consumption, whereas when the sample was taken it was disclosed that it was meant not for direct consumption but for preparing either butter milk or curry and therefore, the entire exercise of taking sample and getting it analysed has proceeded on erroneous premise. This finding of the learned Magistrate, is erroneous according to Mr.Bukhari for the reasons that there is a necessary presumption in absence of any other material that the sample taken is that of buffalo milk and the curd must conform to the standard prescribed for buffalo milk. He urged that the appeal may therefore be allowed.

4. Mr.Yogesh Lakhani appears for the respondents.

5. Mr.Bukhari has taken this Court through the records and proceedings which is before the Court. He has pointed out that requisite procedure has been followed which aspect remains proved. The premises that the sample was taken and examined in respect of curd meant for direct consumption is an error according to Mr.Bukhari; in the light of the amendment made in the Rule in 1981. There may be some substance in the contention raised by him but that is not the only ground on which acquittal is recorded by the Chief Judicial Magistrate.

6. It transpires that when the sample was taken the complainant was not aware as to whether the hotel firm is a sole proprietorship firm or partnership firm, but he was informed that it is a sole proprietor ship firm owned

by one Laxmansinh Vala. Subsequently, it was found that the Annapurna Hotel is a partnership firm which is owned by respondents Nos.2,3 and 4. herein. Sanction is granted in respect of Dhirajlal (deleted respondent) and present respondents.

7. Mr. Bukhari, despite strenuous efforts, was at loss to point out from the evidence on record any material to indicate that respondents Nos.2,3 and 4 were in active management of the firm business. There is nothing to indicate that there was active connivance on the part of respondents Nos.2,3 and 4 (partners). Regarding the commission of the crime that is the activity of adulteration the prosecution has alleged against the deleted respondent Dhirajlal on the premise that he was in management as he was on the payroll of the firm, there is no evidence forthcoming to indicate that he was on the payroll of the firm. There is nothing on record to indicate in what capacity he was serving the firm. No presumption can be drawn that he was in management of the business of the firm, when there is evidence to indicate that he was sitting at the counter only at the behest of the 'owner' Laxmansinh Vala who nowhere figures in the entire case either as witness or as accused. In the opinion of this Court, if an overall view is taken the present respondents, though partners were not in active management of the firm business but possibly, the firm business was in active management of Laxmansinh Vala. Unfortunately, no inquiry is made in that direction. It was contended before the Court that accused Nos.3 and 4 were staying at a place away from Junagadh, which has not been controverted and no contradictory evidence has come on record.

8. Coupled with the above infirmities, it transpires that only the partners and deleted respondent Dhirajlal were prosecuted. The firm namely Annapurna Hotel has not been prosecuted at all. In *State of Maharashtra v. Baburao Ravaji Mharulkar and Ors.* reported in A.I.R. 1985 S.C. 104, the Apex Court observed that when there is nothing to indicate that the partners was incharge of or was in any way responsible for the conduct of business of the firm, he could not be convicted.

9. In the judgment of the Trial Court it has been observed that the sanction is defective in the light of the fact that while granting the sanction the fact that partners were only sleeping partners has not been considered.

10. In view of what is observed above, there is no

reason for this Court to interfere with the judgment and order of acquittal of the respondents herein alongwith deleted respondent Dhirajlal Popatlal.

11. This Court has closely read the judgment impugned herein. Generally, this Court is in agreement with the reasoning adopted by the learned Trial Magistrate, and conclusion, in view of the decision rendered by the Apex Court in State of Karnataka v. Hema Reddy & Another, A.I.R. 1981 S.C. 1417 and Girijanandini & Ors. v. Bijendra Narain Choudhary, A.I.R. 1967 S.C. 1124. This Court does not deem it necessary to reproduce the evidence in detail. Mr. Bukhari was at loss to point out any other infirmities in the judgment impugned herein good enough to convince this Court to disturb an order of acquittal.

12. The appeal therefore, must fail and the same is dismissed.

6.7.2001. (A.L. DAVE, J.)

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